IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.251 of 2006

Decided on : November 14, 2006

Khem Chand and others **…..Appellants.**

VERSUS

State of H.P. and others **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : **Mr. G.R. Palsara, Advocate.**

For the Respondents : **Mr. Ashok Chaudhary, Additional Advocate General, for respondents No.1 and 2.**

Mr. Lakshay Thakur, Advocate, for respondent No.3.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Appellants-plaintiffs filed a suit for recovery of damages to the tune of Rs.2,00,000/- against the respondents-defendants, alleging that there stood an old house on Khasra No.233, belonging to them, and that sometime in the year 1996 they started constructing a new house at the site of the old house and, while raising the construction of new house, they extended it towards Khasra No.235, which also belongs to them, but defendant-respondent No.3 Pratap Singh, the then Tehsildar, on being instigated by some unknown person, came to the spot on 24.6.1997 and started dismantling a portion of the house without affording any

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Whether the reporters of the local papers may be allowed to see the Judgment?

opportunity of being heard to the plaintiffs. It was also alleged that the plaintiffs approached defendant No.3 for demarcation of their property but he dilly-dallied and ultimately they moved an application to the Additional District Magistrate, in the capacity of Revenue Officer, who deputed a Kanoongo to carry out the demarcation and the Kanoongo on such demarcation found that the portion of the house, which had been dismantled, stood on Khasra No.233, belonging to the plaintiffs.

3. Defendants contested the suit. They alleged that encroachment had been made upon their land, bearing Khasra Nos. 230, 231 and 232, and a portion of the house had been constructed on Khasra No.231, which is *Gairmumkin Rasta* and that defendant No.3 went to the spot and issued a show cause notice to the plaintiffs but they refused to accept that notice and ultimately he passed an order under Section 163 of the H.P. Land Revenue Act and executed the same.

4. The trial Court dismissed the suit holding that the plaintiffs had not been able to prove that one room of their house had been demolished. Trial Court placed reliance upon the demarcation report, on the basis of which defendant No.3 removed the alleged encroachment made by the plaintiffs on government land, bearing Khasra Nos. 230, 231 and 232. The trial Court rejected the demarcation report Ex. PW-7/A and Tatima Ex. PW-7/B relied upon by the plaintiffs, holding that Kanoongo was not competent to give demarcation with regard to government land.

5. Appeal filed by the plaintiffs in the Court of District Judge against the decree of dismissal of their suit by the trial court also stands dismissed.

6. Grievance of the appellants is that the two courts below have erred in not placing reliance upon demarcation report Ex. PW-7/A and Tatima Ex. PW-7/B. It may be stated that after the alleged demolition of a portion of their house, the plaintiffs moved an application to the Additional District Magistrate for demarcation of their land, bearing Khasra No.235. Copy of the said application is Ex. D-II on the record of the trial Court. One Dhani Ram was impleaded as respondent in the application. A Kanoongo, named Shri Amar Chand PW-7, was deputed to carry out the demarcation. He submitted the report Ex. PW-7/A and Tatima Ex. PW-7/B. As per this report and Tatima, a portion of the house that had been demolished stood on Khasra No.233 and the area of that portion was 4 biswansis. That portion was depicted in the Tatima Ex. PW-7/B filed with the report.

7. For two reasons, this report cannot be made the basis for decreeing the claim for damages preferred by the appellants-plaintiffs. Firstly, the demarcation was sought by the plaintiffs-appellants in respect of land bearing Khasra No.235 only, whereas the Kanoongo in his report has stated that illegal demolition of a portion of the house, standing on Khasra No.233, had been carried out. Secondly, respondents-defendants, particularly defendant-respondent No.3 Pratap Singh, who allegedly carried out the demolition in an illegal manner, was not made party to the

demarcation application, copy Ex. D-2, and, therefore, this report could not have been used against him.

8. Learned counsel for the appellants-plaintiffs has made another submission. According to him, the entire procedure followed by defendant-respondent No.3 for the removal of the alleged encroachment on government land was illegal, besides being violative of the principles of natural justice, in as much as the issuance of show cause notice, under Section 163 of the H.P. Land Revenue Act, passing of the order for the removal of the encroachment and the implementation of the aforesaid order took place on the same day, i.e. 24.6.1997. The argument has been stated only to be rejected. The simple and the plain case of the appellants-plaintiffs is that they had not made any encroachment and that the portion of the house that was demolished stood on their own land bearing Khasra No.233. It is not their case that any encroachment had been made by them and that that encroachment was removed by issuing the show cause notice, conducting the proceedings, passing the order and implementing that order on the same day. Not only this, plaintiff Khem Chand, while in the witness box, categorically stated that no encroachment on government land, bearing Khasra Nos. 230, 231 and 232, had been made, nor were the plaintiffs ejected from the aforesaid khasra numbers, pursuant to the alleged illegal order of 24.6.1997.

9. From the above discussion, it is clear that no substantial question of law arises. So, the appeal is dismissed.

November 14, 2006(sd) **(Surjit Singh), J.**